

UNITED STATES OF AMERICA and  
THE STATE OF WISCONSIN

Plaintiffs,

V.

NCR CORPORATION, *et al.*

Defendants.

Civil Action No. 10-C-910

The Honorable William C. Griesbach

**PLAINTIFFS' STATUS REPORT  
REGARDING THE 2013 FOX RIVER REMEDIATION EFFORT**

Although the 2013 Fox River remediation effort began as scheduled on April 1, NCR Corporation imposed last-minute contractor constraints that are severely limiting the pace and progress of the cleanup work, as described below. NCR has indicated that those constraints will remain in place at least until the Court issues its trial ruling because other defendants have not agreed to help fund the work on an interim basis.

As required by EPA's Unilateral Administrative Order, NCR's contractors submitted a Remedial Action Work Plan for 2013 and EPA and WDNR gave that Work Plan final approval on March 21. Just like the earlier draft of that Work Plan that was referenced during the December trial, the final version prepared by NCR's contractors indicated that the 2013 dredging work would begin on April 1 with at least two 8-inch dredges and one 12-inch dredge, and ultimately remove a total of about 575,000 cubic yards of sediment from specified dredge areas "in the reach of the river between the De Pere Dam and the Mason Street Bridge." The draft and final versions of the Work Plan also indicated that the two 8-inch dredges would start work "in the reach of the river south of Highway 172 on the west side of the River" while the larger

12-inch dredge would concentrate initially on high-volume dredging in three designated areas between the Highway 172 Bridge and Georgia-Pacific's Green Bay West facility.

At 8:10 p.m. on Easter Sunday, March 31, NCR sent the United States notice that the company had instructed its contractors to perform no remediation work in the downstream portion of OU 4 where Georgia-Pacific has stipulated that it is liable (along with others) for performance of the remediation work required by the UAO. NCR indicated that "no debris removal, dredging, capping, or sand covering work will be performed in Lower OU4 until further notice" because Georgia-Pacific and the other defendants had not accepted an NCR proposal that they help finance the work on an interim basis while the parties await the Court's ruling. NCR's directive to its contractors effectively rules out dredging in most of the areas that the 2013 Work Plan set aside for the high-production 12-inch dredge and it is estimated that it leaves only about 250,000 cubic yards of sediment to be dredged in Upper OU 4 where NCR is allowing its contractors to work. As a result, the 12-inch dredge has been idle since the two 8-inch dredges began work on April 1. Even if NCR's contractors redeploy the 12-inch dredge in Upper OU 4, that larger dredge will not be able to operate at its optimum production rate due to the conditions in the remaining dredge areas within that segment of the river.

In prior filings with the Court, the United States has expressed its belief that NCR would have a contribution remedy to recoup any overpayments if the *Whiting* case rulings are revised by this Court or overturned on appeal. Counsel for the United States has reemphasized that point in recent communications with NCR's counsel, also noting that any remediation slowdown or stoppage based on NCR's failure to obtain interim funding contributions from others could constitute willful violation of the UAO without sufficient cause, giving rise to potential statutory sanctions up to \$37,500 per day in penalties plus punitive damages of up to three times the amount of any costs incurred by the Superfund as a result of the noncompliance with the UAO.

See 42 U.S.C. §§ 9606(b), 9607(c)(3). NCR has not withdrawn its directive limiting the pace and progress of the work, however.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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Dated: April 4, 2013

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